

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

FRANKIE L. McCANN

PETITIONER

v.

CIVIL ACTION NO. 2:23-cv-151-TBM-ASH

STATE OF MISSISSIPPI

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the submission of the Report and Recommendation [37] entered by United States Magistrate Judge Andrew S. Harris on November 6, 2024. Judge Harris recommends dismissing Frankie L. McCann's Petition for Writ of Habeas Corpus [1] without prejudice for lack of subject matter jurisdiction, as he was not "in custody" under the 2011 rape conviction which the Petition attacks. McCann has not filed an objection to the Report and Recommendation, and the time for filing an objection has expired.¹

"When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72(b) advisory committee's note to 1983 addition (citations omitted); *see Casas v. Aduddell*, 404 F. App'x 879, 881 (5th Cir. 2010) ("When a party fails timely to file written objections to the magistrate judge's proposed findings, conclusions, and recommendation, that party is barred from attacking on appeal the unobjected-to proposed findings and conclusions which the district court accepted, except for plain error") (citing *Douglass v. United Serv. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc); 28 U.S.C. § 636(b)(1)). Having considered Judge Harris' Report and Recommendation, the Court finds that it is neither clearly erroneous nor contrary to law.

¹ A copy of the Report and Recommendation [37] was mailed to McCann at the address listed on the docket on November 6, 2024.

IT IS THEREFORE ORDERED AND ADJUDGED that the Report and Recommendation [37] entered by United States Magistrate Judge Andrew S. Harris on November 6, 2024, is ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED AND ADJUDGED that the claims asserted in Frankie L. McCann's Petition for Writ of Habeas Corpus [1] are DISMISSED without prejudice for lack of subject matter jurisdiction.

THIS, the 19th day of December, 2024.



TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE